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To: Energy Streamlining Task Force

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# of pages plus cover page: 3

Notes

Here are comments submitted by Express Pipeline and Platte Pipe Line. The same comments were sent by email. The original has been sent via U.S. mail.

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Chair, Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503

Attention: Energy Streamlining Task Force

Dear Mr. Chairman:

Express Pipeline and Platte Pipe Line, each a subsidiary of AEC Pipelines Ltd., own and operate a 1717 mile long crude oil pipeline delivery system that begins in Alberta, Canada and ends near Wood River, Illinois. The Express facilities terminate at their interconnection with Platte. Crude oil delivered by Express and Platte serves markets in the Midwest and Rocky Mountain regions of the United States. Express and Platte carry various types of crude oils produced in Canada and in the United States. I am writing to bring to your attention our concerns, and to offer some suggestions, about the process for issuing Presidential Permits for oil pipelines.

The Report of the National Energy Policy Development Group, which led to E.O 13212 establishing your task force, also recommended a study on streamlining the Presidential Permit review process to make this regulatory regime more compatible with cross-border trade. These comments are directed at the appropriate review group for this matter.

Executive Order 11423, as amended by Executive Order 12847, states that the "proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities connecting the United States with a foreign country." These Executive Orders empower the Secretary of State to issue Presidential permits for certain facilities, including oil pipelines.

The Executive Order requires an interagency review process. Accordingly, one focus of your review could be to shorten the time needed to process Presidential Permit applications by improving inter-agency cooperation. As an operator and developer of oil pipelines in North America, we are very familiar with the complexity of obtaining permits and approvals from multiple government agencies, both Federal and State. Oil pipelines do not require Federal certificates of public convenience and necessity as natural gas pipelines do, and generally the only regulatory approvals needed for oil pipelines are Federal, State, or local right-of-way, environmental, or siting approvals, which can often be issued promptly. The oil pipeline business (like other businesses in the oil processing chain from well head to retail outlet) is very competitive and pipeline operators often must respond quickly to market opportunities. Thus, any unnecessary delay that can be removed from an approval process helps to make sure that market forces are not hindered.

In addition to simply focusing on such "coordination" issues, we hope you will keep in mind the basic rationale for issuing Presidential Permits, which is to serve the national interest in the context of foreign relations. In that vein, I call your attention to the current practice of the State Department to issue permits

that define "United States facilities" to be all of the facilities located in the U.S. and described in the application, even if they are not "at the borders." This has the effect of subjecting future facilities expansions, to the Presidential Permit process, even those expansions that do not requires any changes to the previously approved border facilities, but rather involve only facilities that are many miles from the border. This process creates substantial delay and expense for the pipeline operator, yet does not appear at all relevant to the foreign relations concerns that gave rise to the Presidential Permitting process. To the contrary, there could be competitive and national treatment implications, if, for example, an operator is subject to a Presidential Permit review (for a new facility distant from the border), while competitors are not, regardless of the national origin of the crude oil transported.

In our case, construction began on Express Pipeline in 1996 and the pipeline went into service in 1997. The Presidential Permit issued in 1996 by the State Department defines the U.S. facilities covered by the Permit as "those parts of the facilities located in the United States," in other words, some 515 miles of pipeline, and attached facilities, in the United States. Express is currently considering an expansion of the pipeline by adding additional pump motors to pumps station sites identified in the 1996 permit application. These pump stations are between 50 and 500 miles from the border. Nevertheless, we have been advised by the State Department that this constitutes a modification of Express' U.S. facilities that would require an amendment to the existing permit.

One solution would be for the State Department to clarify its definition of "United States facilities" in the context of Presidential Permits. For example, it could (i) establish that the facilities being approved in the Permit are from the border point to a specific location in the United States, which may be only several hundred feet from the border (for example the first valve station) and (ii) establish that the State Department's authority to amend the Permit would be limited to changes in the U.S. facilities at the border that were approved in the Permit. From a policy perspective, we believe this would be consistent with the purpose of the underlying Executive Orders.

Taking a plain meaning approach to "facilities at the border" for purposes of the original Permit and any amendments to the Permit also would facilitate a more efficient environmental review process for oil pipeline facilities that involve a new or modified border crossing. In the case of Express, the State Department took the position that its jurisdiction over the facilities at the border triggered its NEPA responsibilities for all 515 miles of pipeline, plus contemporaneous refurbishment work on the Platte Pipeline, notwithstanding the fact that other federal and state agencies were conducting thorough environmental reviews of the projects.

It is well established that an agency's discretion to consider environmental impacts . . . must be exercised within the scope of the agency's authority." Winnebago Tribes of Nebraska v. Ray, 621 F2d 269 at 272. In this regard, the U.S. Corps of Engineers and the Federal Energy Regulatory Commission have adopted a procedure for determining the proper scope of their respective environmental review of a project. These agencies consider four factors in determining whether there is sufficient federal control and responsibility over a project as a whole to warrant environmental analysis of portions of the project outside the agency's direct sphere of responsibility. The factors are: (i) whether or not the regulated activity comprises merely a link in a corridor type project, e.g., a transportation or utility transmission project; (ii) whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity; (iii) the extent to which the entire project will be within the agency's jurisdiction; and (iv) the extent of cumulative federal control and responsibility. See, Algonquin Gas Transmission Co., 59 FERC ¶ 61,255 (1992).

Applying these criteria in the context of an application for a Presidential Permit, the State Department would, on a case by case basis, determine whether its NEPA responsibilities are limited to the "facilities at the border" over which it has direct jurisdiction, or extend to some or all of the non-border facilities over which it has no direct jurisdiction. We believe that in many cases, the State Department could reasonably conclude that its NEPA responsibilities do not extend beyond the "facilities at the border." However, as in the case of Express and Platte, that would not mean that the facilities will not be subject to environmental review, but rather will not be subject to duplicative environmental review.

We believe this suggestion would meet your overall goal of streamlining energy permitting decisions while recognizing the need for environmentally sound decisions. In cases where an operator wants to add new facilities that are not at the border of the United States, it would not need to file a Presidential Permit application. This would reduce the possibility that this operator might be at a regulatory disadvantage if a competitor was not subject to the Presidential Permit process. In addition, it would reduce the overall regulatory burden for a key sector of U.S. energy infrastructure.

We would be pleased to discuss this suggestion further with you or your staff at your convenience. Please call me at 403-691-6010, or you may also call our Washington representative, Mr. Len Levine, at 202-965-2788.

Sincerely,

B J Bradley

Bernie J. Bradley
President
Express Pipeline LLC
Platte Pipe Line Company